

1 MARK E. McKEEN (S.B.#130950
2 THOMAS A. COUNTS (S.B.#148051)
3 RICHARD E. ELDER (S.B. #205389)
4 PAUL, HASTINGS, JANOFSKY &
5 WALKER LLP
55 Second Street, 24th Floor
San Francisco, CA 94105-3441
Telephone: (415) 856-7000
Facsimile: 415) 856-7100

6 Attorneys for Plaintiff Align Technology, Inc.
Case 3:05-cv-02948-MMC

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7 GEORGE A. RILEY (S.B. #118304)
8 DARIN W. SNYDER (S.B. #136003)
9 MICHELLE L. DAVIDSON (S.B. #218559)
DAVID S. ALMELING (S.B. #235449)
O'MELVENY & MYERS LLP
10 Embarcadero Center West
275 Battery Street
11 San Francisco, CA 94111-3305
Telephone: (415) 984-8700
12 Facsimile: (415) 984-8701

13 Attorneys for Defendants OrthoClear, Inc. and OrthoClear
Holdings, Inc.

14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

18 ALIGN TECHNOLOGY, INC.,
19 Plaintiff,
20 vs.
21 ORTHOCLEAR, INC. and
22 ORTHOCLEAR HOLDINGS, INC.,
23 Defendants.

CASE NO. CV-05-2948 MMC (JCS)

**[PROPOSED] STIPULATION AND
ORDER REGARDING PLAINTIFF'S
OUTSTANDING DISCOVERY MOTIONS;
AND DEFENDANTS' MOTION TO
COMPEL FURTHER RESPONSES TO
REQUESTS FOR PRODUCTION AND
INTERROGATORIES AND DEPOSITION
NOTICES**

1 Whereas, on May 9, 2006, Plaintiff Align Technology, Inc. ("Align") filed a
 2 Motion to Compel Depositions of William Britt and Alice Ruutel, and on May 9, 2006 Align filed
 3 Motion to Compel Depositions Of Defendants' Persons Most Knowledgeable; and

4 Whereas, on May 5, 2006, OrthoClear, Inc. ("OrthoClear") and OrthoClear
 5 Holdings, Inc. ("Holdings") (collectively, "Defendants") filed a Motion to Compel Further
 6 Responses to Requests for Production and Interrogatories and Deposition Notices; and

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8 Whereas, the Parties have extensively met and conferred to resolve their
 9 disagreements without intervention by the Court and have reached agreements on all of those
 10 disagreements.

11 Therefore, it is hereby ordered that:

12 1. OrthoClear agrees to produce Bill Britt and Alice Ruutel (on dates to be
 13 determined by the Parties) for deposition before July 1, 2006. OrthoClear further agrees to
 14 produce witness(es) for deposition before July 1 as the person most knowledgeable on the
 15 remaining topics of Align's February 17, 2006 and March 3, 2006 Notices of Taking Deposition
 16 of Persons Most Knowledgeable for Defendant OrthoClear, Inc., except for topics 13-17 of
 17 Align's February 17, 2006 Notice of Taking Deposition of Persons Most Knowledgeable for
 18 Defendant OrthoClear, Inc.

19 2. On or before June 16, 2006, Align will supplement its response to Nos. 1-8
 20 of OrthoClear's First Set of Interrogatories ("OrthoClear's Interrogatories") and Nos. 1-6 of
 21 Holdings' First Set of Interrogatories ("Holdings' Interrogatories").

22 3. On or before June 16, 2006, Align will supplement its response to
 23 OrthoClear's Interrogatories Nos. 20 and 21 and Holdings' Interrogatories No. 10.

24 4. On or before June 16, 2006, Align will supplement its response to
 25 OrthoClear's Interrogatories No. 15. Align represents that it will not supplement its responses to
 26 OrthoClear's Interrogatories Nos. 14 and Holdings' Interrogatories No. 8 because all other
 27 responsive information is protected under the attorney-client privilege or the work-product

1 doctrine.

2 5. On or before June 16, 2006, Align will supplement its responses to:

3 a. OrthoClear's Interrogatories No. 9 and OrthoClear's First Set of
4 Request for Production of Documents ("OrthoClear's RFPDs") No.
5 99 by producing all press statements, marketing, and webpages
6 referring to certification or training.

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8 b. OrthoClear's Interrogatories No. 10 and OrthoClear's RFPDs No. 7
9 by producing a list of all doctors revealed by diligent search and
10 reasonable inquiry who were certified one-on-one, or in a doctor's
11 office, restaurant, or bar.

12 c. OrthoClear's Interrogatories Nos. 16 and 17 and OrthoClear's
13 RFPDs No. 17 by producing a list of all doctors revealed by
14 diligent search and reasonable inquiry who have been decertified by
15 Align.

16 d. Holdings Interrogatories Nos. 15-18 and 20 and OrthoClear's
17 RFPDs No. 145 by describing the policy for whether a doctor is
18 listed on Align's "Find a Doctor" webpage.

19 6. On or before June 16, 2006, Align will supplement its response to
20 OrthoClear's Interrogatories Nos. 11 and 12 and OrthoClear's RFPDs No. 64 by listing the Bates
21 numbers of previously produced documents that define when and how "The Clear Way To
22 Straighten Teeth" was used.

23 7. On or before June 16, 2006, Align will supplement its response to
24 OrthoClear's Interrogatories No. 22.

25 8. On or before June 16, 2006, Align will identify the number of doctors who
26 have agreed to exclusivity contracts including but not limited to the Welcome Back program, as
27 well as the number of cases submitted under exclusivity contracts including but not limited to the

1 Welcome Back program.

2 9. On or before June 30, 2006, Align will supplement its responses to
3 OrthoClear's RFPDs Nos. 130 and 131 by producing all communications with doctors and
4 patients that are revealed by a reasonably diligent search that (1) refer to "The Clear Way To
5 Straighten Teeth," (2) relate or refer to evidence of confusion, and (3) contain the following
6 words (and their plurals): "train," "training," "trained," "certifies," "certify," "certified,"
7 "certification," "educating," "education," and "educate."
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9 10. On or before June 16, 2006, Align will produce a list of every doctor
10 revealed by diligent search and reasonable inquiry that has been certified by Align. Also by June
11 16, 2006, Defendants will identify the Bates numbers of previously produced documents that lists
12 doctors certified by OrthoClear and the dates of those lists.

13 11. On or before June 16, 2006, Align will produce all surveys and market
14 research regarding "The Clear Way To Straighten Teeth."

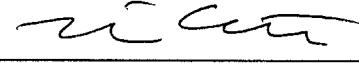
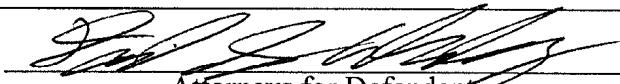
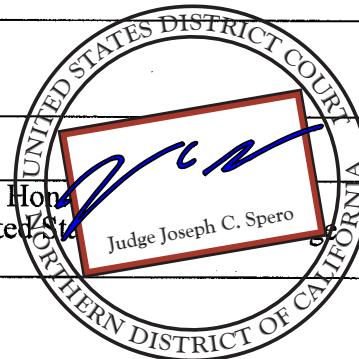
15 12. On or before June 23, 2006, Align will produce a complete set of Align's
16 Quarterly Sales Reference Guides, redacting those portions that do not relate or refer to
17 certification, training, sample advertisements, or "The Clear Way To Straighten Teeth."

18 13. The Court, in light of Align's agreement to provide supplemental responses
19 to Nos. 1-8 of OrthoClear's Interrogatories and Nos. 1-6 of Holdings' Interrogatories (*see supra ¶*
20 2), will defer ruling on Defendants' motion to compel Align to designate additional witnesses on
21 Topic Nos. 9, 11, and 12 (of Ex. Y to the David S. Almeling Declaration ISO Defendants' Motion
22 to Compel Further Responses to Requests for Production and Interrogatories and Deposition
23 Notices ("Almeling Decl.")) and Topic Nos. 6-10 and 12-15 (of Ex. Z to the Almeling Decl.). If
24 Defendants are not satisfied with Align's supplemental responses to those interrogatories and the
25 Parties cannot resolve their disagreement, the Parties agree to submit a joint statement to the
26 Court by no later than June 23, 2006 to resolve the disagreement.

1 14. Align agrees to produce Lou Shuman (on a date to be determined by the
 2 Parties) for deposition before July 1, 2006.

3 15. With the exception of the issues discussed in paragraph 13, the Parties
 4 motions are deemed withdrawn.
 5

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD. Case 3:05-cv-02948-MMC Document 179 Filed 06/09/2006 Page 5 of 5

DATED: <u>6/9/06</u>	 Attorneys for Plaintiff
DATED: <u>6/9/06</u>	 Attorneys for Defendant
PURSUANT TO STIPULATION, IT IS SO ORDERED.	
DATED: June 9, 2006	 <div style="text-align: center; margin-top: -10px;">  Hon. Joseph C. Spero United States District Judge Northern District of California </div>